



**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
-----------------	-------------	----------------------	---------------------

09/483,039 01/18/00 TOTH

M 5212USA

John A. O Toole Esq  
P O Box 1113  
Minneapolis MN 55440

IM22/0913

EXAMINER

MAIL H

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

09/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

**Office Action Summary**

Application No.

09/483,039

Applicant(s)

TOTH ET AL.

Examiner

Hao T Mai

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 22 June 2001.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112: The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-42 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not have support for the phrase "absence of threads".

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 7, 19, 22, 25, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "substantially" is a relative term which renders the claim indefinite. The term "substantially" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Art Unit: 1761

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7, 16, 19-23, 25, 34, 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Jeng(5,180,079). Jeng teaches a side wall forming an upper opening(figs. 3-4), a bottom wall connected to the side wall opposite the upper opening(figs 3-4); and a flange body extending downwardly from the bottom wall, the flange body defining an inner surface and an outer surface(figs 3-4), the inner surface being configured for selective attachment to a beverage container and characterized by the absence of threads(figs 3-4); wherein the snack food container defines an internal storage region for containing a snack food product(figs 3-4), the internal storage region being formed apart from the inner surface of the flange body(figs 3-4, abstract). Regarding claims 2, and 20, Jeng teaches the flange body is sized in accordance with to top portion of a beverage(fig. 4) Regarding claims 3, 21, Jeng teaches the container is cylindrical (fig. 4) Regarding claims 4, 22, and 39 Jeng teaches the inner surface is substantially annular(fig. 4) Regarding claims 5, and 23, Jeng teaches the diameter slightly greater than a diameter of the top portion of the beverage container (fig. 4).

Art Unit: 1761

Regarding claims 7 and 25, Jeng teaches the inner surface includes a first section adjacent the bottom wall and a second section extending from the first section, first section being substantially vertical (fig. 4).

Regarding claims 16, 34 and 38, Jeng teaches the sidewall, the bottom wall and the flange body are integrally formed(fig. 4).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeng. Jeng teach all of the claimed limitations except for the specifically claimed diameter range of 52-55mm. However, the specifically claimed diameter is not seen to be a patentable distinction, but rather is just a matter of design choice, and it would have been obvious to one of ordinary skill in the art.

8. Claims 12 -15, 17, 30-33, 35, 37, and 40-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeng in view of Brauner et al(5,318,787)(Brauner). Jeng teaches all of the claimed limitations except for a slot extending from the sidewall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the sidewall via the slot. Brauner teaches a slot extending from the sidewall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the sidewall via the slot(figs 5-6(62)). It would have been obvious to one of ordinary skill in

Art Unit: 1761

the art to make a slot extending from the side wall to the bottom wall such that an area below the bottom wall is accessible from an exterior of the side wall via the slot as taught by Brauner, since Brauner teaches that this feature assists in the mounting of the container to beverage container(col. 5, lines 35+).

Regarding claims 13, 31, Brauner teaches the slot sized to allow passage of a straw(col. 5, lines 39 +).

Regarding claims 14 and 32, Brauner teaches the angular fashion slot(figs 5-6).

Regarding claims 15, 33 and 41, Brauner teaches the slot extends through the flange body(figs. 5-6).

Regarding claims 17, 42 and 35, Brauner teaches a protective film secured across the upper opening(fig. 1)

Regarding claims 37, Brauner teaches a dry food item(col. 1)

1. Claims 18 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jeng in view of Harvey et al(4,054,205)(Harvey). Jeng teaches all of the claimed limitations except for a straw associate with the sidewall. Harvey teaches a straw associate with the sidewall (fig. 4). It would have been obvious to one of ordinary skill in the art to make a straw associate with the sidewall as taught by Harvey so as to provide convenience for end user.

#### ***Allowable Subject Matter***

1. Claims 8-11, 26-29, objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 1761

***Response to Arguments***

2. Applicant's arguments with respect to claim 1-42 have been considered but are moot in view of the new ground(s) of rejection. However, the 112 rejection arguments have been fully considered but they are not persuasive. Applicants pointed out that the term "annular structure" is defined as preferably of at least 18, more preferably at least 270. It is submitted that the phrase consider to be vague and indefinite, therefore, the rejection still remain.

***Conclusion***

3. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 1761

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hao T Mai whose telephone number is (703)306-9171. The examiner can normally be reached on 8AM-7PM; MON-THU.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-7718 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0661.

hm  
September 8, 2001

  
**MILTON I. CANO**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1700**